



United States Government
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
CONTEMPT, COMPLIANCE, AND SPECIAL LITIGATION BRANCH
1015 Half Street, S.E., Room 4029
Washington, D.C. 20005
Tel: 202-273-1947
Fax: 202-273-4244

August 24, 2015

Honorable Analisa Torres
United States District Court
for the Southern District of New York
United States Courthouse
500 Pearl Street, Courtroom 15D
New York, NY 10007-1312

Re: *National Labor Relations Board v. New York Part Shuttle, LLC*,
No. 1:15-mc-00233-P1

Dear Judge Torres:

We are submitting this letter in response to your order (Doc. # 12) dated August 24, 2015, requesting additional information from the National Labor Relations Board ("NLRB") in the above-captioned matter. Specifically, this court has requested information as to 1) why the NLRB has concluded that there are cash flow problems relating to the operations of New York Party Shuttle, LLC ("NYPS") at its New York City location, and 2) the relationship between NYPS and the entities whose records are sought by the NLRB's subpoena.

With regard to the court's first inquiry, the NLRB, in December 2014, received from a witness a copy of an e-mail sent to some employees of NYPS from "Tom" (i.e., C. Thomas Schmidt, the owner of NYPS). The e-mail, dated December 11, 2014, and addressed to "Team," details admitted "cash flow problems." The e-mail acknowledges that sales were down "significantly" in 2014, because of the new competition in double-decker tours. This new competition, along with "other factors," according to the e-mail, has made cash flow "extremely difficult." The e-mail further states that Schmidt was working night and day talking to investors about "putting in more capital" and, in the meantime, trying to resist having to shut down tours and lay people off. Additionally, the e-mail states that while employees were going to get paid, checks for independent contractors were going to be held until further notice. A copy of this correspondence is enclosed. We have not included forwarding information, out of concern that it may reveal the identity of the witness who provided us with the copy.

The NLRB also has in its possession a second e-mail from Schmidt to an employee of NYPS. This e-mail was sent by Schmidt in December 2014 and further details the company's cash flow problems. We have not enclosed a copy of this e-mail

out of concern that it will reveal the identity of the person who provided it to us. *See Brock v. Frank V. Panzarino, Inc.*, 109 F.R.D. 157, 158 (E.D.N.Y. 1986) (discussing government's privilege to withhold from disclosure the identity of persons who furnish information concerning violations of the law to officers charged with enforcement of that law.)¹

With regard to the court's second inquiry, besides NYPS, the subpoena seeks information concerning OnBoard Tours, Party Shuttle Tours, LLC, Washington DC Party Shuttle, LLC ("DCPS"), and OnBoard Las Vegas Tours, LLC ("OBLV") as part of its investigation into the matter of derivative liability.² The evidence gathered by the NLRB thus far establishes that OnBoard Tours is the d/b/a of NYPS, DCPS, and OBLV. Among other things, we have obtained sworn testimony from witnesses that Party Shuttle Tours, LLC, may be a holding company of the other LLCs. The documentary and testimonial evidence gathered by the NLRB strongly suggests that Schmidt, based in Houston, Texas, is the owner of all of the LLCs and asserts managerial, supervisory and financial control over these entities, particularly NYPS, DCPS, and OBLV.³

We will promptly provide additional information, should the Court require.

Sincerely,

s/ Igor Volynets
IGOR VOLYNETS, ATTORNEY
igor.volynets@nrlb.gov

¹ Further supporting the NLRB's conclusion that NYPS has cash flow problems are evidence of tax liens issued by the State of New York against the company in the amounts of \$35,975.00, \$14,097.00, \$3,433.00, \$18,123.00 between October 2013 and July 2014.

² Because of the above-described cash flow problems of NYPS, the NLRB launched an investigation into whether any of the other LLCs may be held liable for the as-yet-to-be-liquidated monetary amount owed by NYPS in *New York Party Shuttle, LLC v. NLRB*, No. 13-60364 (5th Cir.).

³ These documents are protected from disclosure to respondent by the informer's privilege (*see, e.g., NLRB v. Laborers Local 1140*, 78 LRRM 2635, 2637 (8th Cir. 1971); *NLRB v. Truck Drivers Local 282*, 78 LRRM 2793 (2d Cir. 1969); *Roviaro v. U.S.*, 353 U.S. 53, 59 (1957)), and the work product privilege. *See Hickman v. Taylor*, 329 U.S. 495, 510-13 (1947); *NLRB v. Laborers Local 1140*, 78 LRRM at 2637.

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing using the Court's CM/ECF filing system and e-mailed the foregoing to James M. Felix, counsel for New York Party Shuttle, LLC, at jfelix@kilhennyfelix.com.

s/ Igor Volynets
IGOR VOLYNETS

Volynets, Igor

Subject: FW: NYPS Paychecks

----- Forwarded message -----
From: **Tom Schmidt** <tom@onboardtours.com>
Date: Thu, Dec 11, 2014 at 12:49 PM
Subject: NYPS Paychecks
To: Fred <fred@onboardtours.com>

Access to Experts. Access to Deals. Access to Capital.

[View this email in your browser](#)

Team:

I am aware of the issues with paychecks, and wanted to address them with you. It is not a secret that our sales are down significantly this year, in large part because of the new competition in double-decker tours. That and other factors have made cash flow extremely difficult. In addition, we recently had to renew our bus insurance, renew our worker's comp insurance, and pay several other large items that contributed to the problem. We are working hard to cut expenses to offset the decline. We have also advertised specials and package deals on our tours to spur sales. We are working to maintain the minimal amount of marketing we must do in order to keep people purchasing tours. We are working on putting together some changes to our tour lineup to make our products more attractive to customers. All of those efforts take time to have an effect.

In the meantime, I am working night and day talking to investors about putting in more capital. A couple deals I got done about 3 weeks ago led to paychecks clearing faster and allowing us to make some of the large payments described above. I will keep working in coming weeks on that effort.

As I have said before, this company is too valuable for me to shut it down. We provide the best tours in NYC, thanks to the effort you guys put in, and customers love our company. I will do everything in my power to get through this process. Additionally, I am trying to resist having to shut down tours and lay

people off. We want that to be a last option rather than a first option so that you can continue to have work.

I realize that this is stressful for you. It is also stressful for Fred and for me and for everyone. If we stick together, we will get through this rough period and get the company back in shape as we get more investors to contribute and our sales and expense-cutting efforts kick in.

I have instructed Fred to handout paychecks today to those people who are employees. Checks for independent contractors will be held until further notice, so that at least the majority of employees can be paid first. That should also help you get paid faster.

I have also heard that some people have expressed that they have tried to contact me and that I have not responded. Please understand that I am on the phone all day every day, and/or in meetings. I receive over 100 calls per day, and several thousand emails. If you have a specific question or concern you want to get to me, the best way to do that is to send me an email with "For Tom" in the subject line. That way, my email system will flag the email as important. I typically respond to emails in the middle of the night, so don't be surprised if it takes a while for me to respond. Obviously, as much as I would like to talk to each of you every day, it makes more sense for me to focus my efforts on solving the cash flow problems, and there are just not enough hours in the day for me to do both.

I wish I had better news for the short term, but I want you to know that we are not ignoring the problem. We will get through this period and end up with a stronger company at the end of the day. I thank you all for your continued service to the company.

Thanks.

Tom

Copyright © 2014 OnBoard Tours, All rights reserved.

You are receiving this email because you work with OnBoard Tours

Our mailing address is:

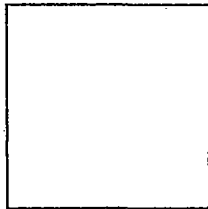
OnBoard Tours

1650 Broadway

New York, NY 10019

[Add us to your address book](#)

[unsubscribe from this list](#) [update subscription preferences](#)



Fred Moskowitz
President OnBoard New Your Tours
212 852 4821 (office)
760 683 2252 (fax)